

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

In the Matter of )

Amendment of Section 73.202(b) )

Table of Allotments )

FM Broadcast Stations )

(Farmersville, Texas) )

MM Docket No. 96-10  
RM-8738

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TO: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION  
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JOINT COUNTERPROPOSAL

HUNT BROADCASTING, INC.  
COWBOY BROADCASTING, L.L.C.

Mark N. Lipp

Mullin, Rhyne, Emmons and Topel, P.C.  
1225 Connecticut Avenue, N.W., #300  
Washington, D.C. 20036  
(202) 659-4700

Their Counsel

April 5, 1996

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## SUMMARY

The joint counterproposal filed in this proceeding proposes to provide first local services to three communities, the opportunity to increase the coverage area for 6 Class A stations from 3 kW to 6 kW and a large gain in reception service to large portions of Texas and Oklahoma. Eight of the nine stations involved are filing as joint petitioners and requesting the changes based on agreements which eliminate the need to negotiate reimbursement of expenses later. Only one station will be required to change channels involuntarily pursuant to an Order to Show Cause. These agreements and the significant public interest benefits of the various proposals comply with the Columbus policy.

All of the proposals comply with the Commission's technical rules. The two stations changing their community of license have provided showings demonstrating compliance with the Commission's rules, policies and past case law. These reallocations will provide a preferential arrangement of allotments particularly when viewed as nine improvements all dependent upon each other and will not deprive the former community of existing service.

The joint counterproposal offers greater benefits under the Commission's priorities than the proposal set forth in the Notice of Proposed Rule Making to allot a first local service to

Farmersville. For these reasons, the joint petitioners urged the Commission to adopt the attached counterproposal.

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TO: Chief, Allocations Branch  
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**JOINT COUNTERPROPOSAL**

Hunt Broadcasting, Inc., licensee of Station KIKM(FM), Sherman, Texas ("KIKM"), and permittee of Station KAIH(FM), Jacksboro, Texas ("KAIH"), and Cowboy Broadcasting, L.L.C., licensee of Station KVMX(FM), Eastland, Texas ("KVMX"), jointly by their counsel, and by the following joint petitioners: (1) Pontotoc County Broadcasting, Inc., licensee of Station KADA-FM, Ada, Oklahoma ("KADA"); (2) Dean Broadcasting, Inc., licensee of Station KGRI-FM, Henderson, Texas ("KGRI"); (3) Pennok Communications, Inc., licensee of Station KRXZ(FM), Ardmore, Oklahoma ("KRXZ"); (4) Harold Cochran, licensee of Station KDDQ(FM), Comanche, Oklahoma ("KDDQ"); and (5) KMOO, Inc., licensee of Station KMOO(FM), Mineola, Texas ("KMOO"), request the following changes to Section 73.202(b), the FM Table of Allotments:

<u>Oklahoma</u>	<u>Existing</u>	<u>Proposed</u>
Ada, OK	227C1, 244A	227C1, 257A
Ardmore, OK	239C1, 243A	239C1, 253A
Comanche, OK	245C2	246A

<u>Texas</u>	<u>Exiting</u>	<u>Proposed</u>
Bridgeport, TX	244A	252A
Eastland, TX	244A, 249A	236A, 249A
Flower Mound, TX	---	244C
Henderson, TX	260C3	---
Jacksboro, TX	269A <sup>1/</sup>	299A
Mineola, TX	244A	260A
Mt. Enterprise, TX	---	260A
Sherman, TX	244A, 281A	281A
Tatum, TX	---	262A

1. The Notice of Proposed Rule Making in this proceeding, 11 FCC Rcd 1790 (1996), proposed the allotment of Channel 260C3 to Farmersville, Texas. That proposal conflicts with the proposed substitute allotment of Channel 260A for Channel 244A at Mineola, Texas. Therefore, this joint proposal is mutually exclusive with the proposed Farmersville channel.

2. Each of the specific proposals will be discussed in detail in the succeeding paragraphs. In summary, there are nine stations involved and one proposed new allotment. All of the nine stations except Station KBOC, Bridgeport, Texas, are petitioning parties requesting improvements to their existing stations. KIKM pledges to reimburse Station KBOC, Bridgeport, Texas, for the reasonable costs of its channel change consistent

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<sup>1/</sup> In MM Docket No. 95-126, 10 FCC Rcd 8303 (1995), Channel 269A at Jacksboro, Texas, is proposed to be changed to Channel 252A. Currently, the channel has an unbuilt construction permit outstanding.



with Commission policy.<sup>2/</sup> Two stations (KIKM, Sherman, Texas, and KGRI-FM, Henderson, Texas) are requesting changes in their communities of license; five stations are operating with 3 kW or equivalent Class A facilities and can achieve 6 kW on the new Class A channels. One of the stations (Eastland) is requesting the channel change because it can significantly improve its coverage area on the proposed substitute channel by having greater flexibility in relocating its transmitter site. The final station involves an unbuilt construction permit which will move to another Class A channel without the need for reimbursement. All but one of the stations affected by this proposal have agreements with Hunt Broadcasting, Inc., licensee of Station KIKM(FM), Sherman, Texas, which will eliminate the need to impose reimbursement for the costs of the various changes. All of the parties not represented by undersigned counsel have provided verified statements supporting each of their respective proposals. As will be discussed, by having entered into agreements prior to the filing of this counterproposal, the Commission's policy of limiting involuntary substitutions to two existing stations does not present an obstacle to the acceptance of this counterproposal. Finally, the two proposals to change community of license will be separately discussed herein.

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<sup>2/</sup> KIKM and KBOC are continuing to negotiate an agreement which would cover the costs of reimbursement. The Commission will be notified if such an agreement is reached.

## I. ACCEPTANCE

### A. The Columbus, Nebraska, Policy

3. In Columbus, Nebraska, et al., 59 RR 2d 1185 (1986), the Commission was asked to substitute five channels in order to upgrade one station. Although the petitioner withdrew his proposal, the Commission was concerned about potential future problems in multiple substitution proposals particularly in having to reach agreements with each of the five stations for reimbursements of expenses and in coordinating the timing of each substitution where one station delaying its implementation would cause delay in all of the other facility modifications. Thus, the Commission advised future petitioners that "absent special factors involving significant public interest benefits, or an assurance of agreement among affected stations to the proposal in advance of filing the petition, the staff has been instructed not to entertain proposals for changes in the FM Table of Allotments which involve more than two other substitutions of channels occupied by existing FM or TV stations." (at 1185). In a more recent case, Castle Rock, Colorado, et al., 8 FCC Rcd 4475 (1993), the Commission found that where five stations were to change channels but only two of the stations were opposed to the change, the proposal "did not violate the Columbus policy because the counterproposal involved the substitution of only two channels which had not previously agreed to such a change." (at 4475).

4. In the instant counterproposal, KIKM has reached agreement with all but one of the affected stations in advance of filing this petition. These agreements which replace the need for determining reimbursement at a later date are reflected by the attached verified statements from each of the licensees. In each case, the licensee requires the new channel because it offers the opportunity to improve its service. There is only one involuntary channel substitution and therefore no cause for Commission concern that there will be a delay in implementation of the necessary changes. Furthermore, the cumulative effect of these nine changes and the one new allotment which results thereby, constitutes significant public interest benefits as contemplated by the Columbus policy, supra.

**B. Compliance With the Commission's Spacing Rules and Description of Each Proposals**

**(1) KIKM**

5. KIKM is licensed to Hunt Broadcasting, Inc., and currently operates on Channel 244A. That channel would be upgraded to Channel 244C and the community of license changed to Flower Mound, Texas, as its first local service, under this proposal.

6. KIKM will discuss the merits of its proposal to change its community of license consistent with the Commission's rules and policies in a separate section. For purposes of acceptance, the allotment of Channel 244C complies with the Commission's

spacing requirements and will provide 70 dBu coverage to Flower Mound from the transmitter site that KIKM intends to use. This proposed upgrade will require seven other stations to change channels. See attached Engineering Statement prepared by Paul Reynolds, Consultant. As mentioned earlier, all seven stations have agreed to the channel changes and have joined in this request as petitioning parties. Each has entered into agreements with KIKM contingent upon favorable approval of this counterproposal. The proposed upgrade will provide a first local service to Flower Mound (1990 Census population 15,527) and a net population gain of 1,966,281 persons within the proposed 60 dBu coverage area. KIKM states that it will apply for Channel 244C if granted to Flower Mound and construct the facility if authorized to do so.

(2) KAIH

7. KAIH is authorized by an outstanding construction permit to Hunt Broadcasting, Inc. The permit expires on September 6, 1996. The instant proposal would substitute Channel 299A for Channel 269A at a new set of reference coordinates to comply with the spacing rules. As mentioned in Note 1, supra, MM Docket 95-126 proposes to substitute Channel 252A for Channel 269A at Jacksboro. The instant proposal to substitute Channel 299A will have no effect on that pending proceeding. KAIH hereby states that it will apply for Channel

299A if granted at a new transmitter site and will construct the facility.

(3) **KBOC**

8. KBOC is licensed to Community Broadcast Network and operates on Channel 244A as a 3 kW facility. This proposal would substitute Channel 252A and meet the 6 kW channel spacing requirements at KBOC's current transmitter site. As stated, KIKM will reimburse KBOC for the costs of the channel change unless the parties reach an agreement prior to the adoption of this proposal. KBOC should be issued an Order to Show Cause in order to effectuate the channel change.<sup>3/</sup>

(4) **KDDQ**

9. KDDQ is licensed to Harold Cochran.<sup>4/</sup> The station is licensed to operate at 3 kW on Channel 244A. The licensee was granted an upgrade to Channel 245C2 effective October 30, 1989.

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<sup>3/</sup> The Commission has indicated that it will eliminate the requirement that a hearing be held before an involuntary change in a station's frequency, authorized power, or times of operation is ordered. See Draft FCC Implementation Schedule for the Telecommunications Act of 1996, revised March 28, 1996.

<sup>4/</sup> Although the Commission's data base states that Linda K. Allen is the licensee, in fact, on July 14, 1995, Harold Cochran filed a letter informing the Commission that the assignment of license (BALH-940715GG) to Ms. Allen was never consummated. See attached letter as **Exhibit 1**. In addition, on September 25, 1995, the Commission granted a subsequent assignment of license from Mr. Cochran to Comanche Radio, L.L.C. (BALH-950713GH). But, that transaction was never consummated according to Mr. Cochran and the Commission's records.

See 4 FCC Rcd 6851 (1989). However, the licensee never prosecuted an application for Channel 245C2 and has now agreed to downgrade the channel to Channel 246A at a new transmitter site which complies with the Commission's spacing requirements. See attached channel study and verified statement executed by Harold Cochran. Thus there will be no loss of existing listeners by the proposed downgrading of the class of channel. The licensed facility is limited to 3 kW on Channel 244A and can increase its power to 6 kW on Channel 246A and provide an increase in 60 dBu coverage area by 831 sq. km and a net gain in population of 7,520 persons. Mr. Cochran hereby states that he will apply for Channel 246A at a new transmitter site location, if necessary, and construct the facility if authorized to do so.

(5) **KRXZ**

10. KRXZ is licensed to Pennok Communications, Inc., which recently entered into an agreement to sell the station to Oklahoma Sports Properties, Inc. The application has not yet been filed. The station is currently silent but authorized to operate with 3 kW on Channel 243A.<sup>5/</sup> By moving to Channel 253A, the station can increase to 6 kW ERP. The current licensee and the proposed assignee have both entered into an agreement with KIKM to change to Channel 253A and relocate the

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<sup>5/</sup> KDDQ has an outstanding construction permit to relocate its transmitter site. (BPH-950911ID, granted January 23, 1996.) The facility has not been constructed at the new site.

transmitter site. See attached verified statement signed by both parties which state that either of the parties, as licensee, will apply for Channel 253A at a new transmitter site and if granted will construct the facility. The proposed channel substitution will result increase the coverage area by 665 sq. miles with a net population gain of 4,788 persons.

(6) **KADA**

11. KADA is licensed to Pontotoc County Broadcasting, Inc., and operates on Channel 244A as a 3 kW facility. The proposed substitution of Channel 257A complies with the Commission's spacing requirements as a 6 kW facility at KADA's current transmitter site. KADA has a pending application to assign its license to the Chickasaw Nation. The principal of the proposed assignee has provided the attached letter authorizing KADA to pursue the channel change. The proposed substitution would increase the 60 dBu coverage area by 609 sq. km and provide a net population gain of 5,342 persons. By the attached statement, the licensee states that it has agreed to change to Channel 257A at Ada and will apply for the new channel and implement the frequency modification if authorized to do so.

(7) **KGRI**

12. KGRI is licensed to Dean Broadcasting, Inc., and operates on Channel 260C3 at Henderson, Texas. KGRI states in its attached statement that it desires to change its community

of license to provide a first local service to Tatum, Texas. A discussion of the Commission's change in community of license requirements will be provided in a separate section. In order to serve Tatum, KGRI states it is willing to downgrade to Channel 262A and relocate its transmitter site. KGRI will apply for Channel 262A at Tatum at a new transmitter site location and construct the facility if granted. The attached channel study demonstrates that Channel 262A can be allotted to Tatum consistent with the Commission's spacing requirements.

13. By deleting Channel 260C3 from Henderson, Channel 260A can be allotted to Mt. Enterprise, Texas, as its first local service. KGRI also states that it desires to apply for Channel 260A at Mt. Enterprise and construct the facility if authorized to do so. A discussion of the need for a first local service to Mt. Enterprise follows.

14. Mount Enterprise is listed in the 1990 U.S. Census with 501 persons. It has no local service. The city is incorporated and has a mayor and city counsel made up of five members. There are two schools; water is provided by the Mt. Enterprise Water Supply; three churches and a number of businesses. Mt. Enterprise is a community with the indicia to warrant a first local service.



**(8) KMOO**

15. KMOO is licensed to KMOO, Inc., and currently operates on Channel 244A as a 3 kW facility. The proposed substitution of Channel 260A at Mineola will provide a 6 kW Class A channel for the community. Channel 260A can be substituted at Mineola if Channel 260C3 is deleted at Henderson and Channel 262A allotted to Tatum as mentioned in Section 7, supra. Channel 262A can thereby be used at KMOO's current transmitter site and provide an increase in the 60 dBu coverage area by 768 sq. km and a net population gain of 10,277 persons. KMOO expresses in an attached verified statement its intent to apply for Channel 260A at Mineola if the requested substitution is made and construct the facility.

**(9) KVMX**

16. KVMX is licensed to Cowboy Broadcasting, L.L.C., at Eastland, Texas. Although the requested substitution of Channel 236A can be allotted at KMOO's current site, KMOO desires to relocate its transmitter site and as can be seen from the attached channel study, Channel 236A provides a large area in which to relocate. KVMX states, by the undersigned counsel, that it intends to apply for Channel 236A at a new transmitter site which serves Eastland and construct the new facility if authorized.

## II. COMPLIANCE WITH COMMISSION'S REQUIREMENTS FOR CHANGE IN COMMUNITY OF LICENSE

### A. Sherman/Flower Mound

17. In Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989) recons. granted in part, 5 FCC Rcd 7094 (1990), the Commission set forth certain prerequisites for approving a change in community of license: (1) the new community must be preferred under the Commission's priorities, (2) the existing community may not be deprived of its only existing service, and (3) the proposed channel must be mutually exclusive with the existing channel.

18. In this case, Channel 244C at Flower Mound does conflict with Channel 244A at Sherman. Sherman (1990 Census Population 31,601) currently has four licensed radio stations (KJIM(AM), KWSM(FM), KXEB(AM) and KIKM-FM). In addition, Station KDSX is licensed to the hyphenated community, Denison-Sherman. On the other hand, Flower Mound (1990 Census Population 15,527) has no local service. Flower Mound's population has increased by over 350% since the 1980 Census when it had 4,402 persons. According to the attached materials in **Exhibit 2** provided by the City of Flower Mound, the 1995 population was projected to increase in population to 25,550 by 1995. Flower Mound has its own school district with four elementary, 2 middle and one high school. A large number of

businesses employ local residents. The municipal functions are provided by the Flower Mound Fire Department (paid) and the Flower Mound Police Department and the Town of Flower Mound Utilities. The government consists of a mayor and five councilmen. There is a local library, 12 churches, golf course, 20 city parks and a lake. Clearly, Flower Mound has its own economic, cultural and governmental base to warrant its own local radio station.

19. As shown in the attached **Exhibit 3**, Flower Mound is located outside the Dallas-Ft. Worth Urbanized Area and in a different county, Denton, than Dallas or Ft. Worth.

20. It is well established that the Commission will not presume that a community located outside of, but near, an Urbanized Area as defined by the Census Bureau is not entitled to a first local service, e.g., Nowata and Collinsville, Oklahoma, 10 FCC Rcd 7159 (1995). In Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995), the Commission held that for stations which will cover 50% of the closest Urbanized Area with a 70 dBu signal after the move, will be required to make the same showing with regard to interdependence as those proposals for communities located within an Urbanized Area. See RKO General (KFRC), 5 FCC Rcd 3222 (1990); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). Here, as demonstrated by the attached Engineering Statement, the proposed new KIKM facility will provide a 70 dBu signal to less than 50% of the

Dallas-Ft. Worth Urbanized Area. Thus, Flower Mound is presumed to be independent. Nevertheless, the previous discussion and materials provided in **Exhibit 3** demonstrate that Flower Mound is indeed a fast growing community with its own governmental structure, cultural organizations and economic base to support its own radio station. Flower Mound is not dependent on Dallas or Ft. Worth for its existence. See also Canovanas, Puerto Rico, et al., 10 FCC Rcd 6673 (1995); Cadiz and Oak Grove, Kentucky, 10 FCC Rcd 10785 (1995); Scotland Neck and Pinetops, North Carolina, 7 FCC Rcd 5113 (1992) recons. denied 10 FCC Rcd 11066 (1995); and Hallie and Ladysmith, Wisconsin, 10 FCC Rcd 9257 (1995).

21. Finally, as shown in the attached engineering study, the proposed reallocation to Flower Mound will increase the 60 dBu coverage area by 21,635 sq. km and a net gain in population of 1,966,281 persons with a loss of the 60 dBu signal from Sherman will affect only 77,212 listeners. However, according to the attached Engineering Statement, the loss area will continue to have at least five full-time radio stations. See e.g., Atlantic and Glenwood, Iowa, 10 FCC Rcd 13160 (1995).

#### **B. Henderson/Tatum**

22. In its attached statement, KDDQ expresses a desire to change its community of license from Henderson, Texas (1990 Census Population 11,139) to provide a first local service to Tatum, Texas (population 1,289). The proposed new Channel 262A

for Tatum is mutually exclusive with the current Channel 260C3 for Henderson. Neither of the communities are located in or near an Urbanized Area. Henderson will continue to receive local service from daytime-only Station KWRD(AM) co-owned with KGRI-FM.

23. Tatum is an incorporated community listed in the 1990 U.S. Census. Tatum (1990 U.S. Census Population 1,289) is located in Rusk County (population 43,735). In the attached **Exhibit 4**, a community profile of Tatum is provided. Tatum has a Mayor/Council form of government with the usual municipal services -- volunteer fire department, police, trash removal, public library and water supply. There is a daily and weekly newspaper, banks, health and recreational facilities in the city. Tatum has nine churches and four public schools. Tatum has a variety of businesses, including the Tatum Telephone Company, its largest employer. Clearly, Tatum has the governmental, business and social indicia to warrant having its own local service.

24. Past case law supports the proposed reallocation of Channel 262A to provide a first local service. In Marion and Orrville, Alabama, 6 FCC Rcd 3482 (1991), the Commission deleted Channel 247A from Marion (population 4,467) and reallocated the channel to Orrville (population 349) as its first local service leaving Marion with a daytime-only AM station. Marion was 12 times the size of Orrville. Nevertheless, the Commission

avored a first local service. See also Fruitland and Weiser, Idaho, 7 FCC Rcd 7538 (1992); Mora, Bosque Farms and Socorro, New Mexico, 8 FCC Rcd 791 (1993); Ravenswood and Elizabeth, West Virginia, 10 FCC Rcd 5181 (1995) and Bolivar and Nixa, Missouri, 6 FCC Rcd 3648 (1991). In each of these cases the larger community was left with a daytime only AM station in favor of a first local service to a smaller community. Thus, the relative size of the community has not been an impediment to a reallocation from a community retaining local service to a community without local service. See also Oshkosh, Winnebago and Townsend, Wisconsin, and Menominee, Michigan, 10 FCC 2085 (1995) (larger city had 27.7 times more population); Pine Bluff and Maumelle, Arkansas, 6 FCC Rcd 5119 (1991) (larger city had 10 times more population); and Jesup and Midway, Georgia, 6 FCC Rcd 2196 (1991) (larger city had 20.6 times more population). Henderson is 8.6 times larger than Tatum an amount which is significantly less than some of the past cases cited.

25. By relocating Station KGRI to Tatum at the site proposed in the attached Engineering Statement, approximately 48,251 people will lose the KGRI 60 dBu signal. However, this area is well served by at least five existing full time stations. Ravenswood and Elizabeth, West Virginia, supra.

26. The proposal to allot Channel 262A to Tatum as a first local service should also be evaluated by the Commission as part of the overall proposal. In order to achieve a first local

service at Flower Mound, an increase in service for six other Class A stations and a first local service to Mt. Enterprise, Channel 260C3 must be deleted from Henderson and reallocated to Tatum as requested by KGRI consistent with the overall proposal. Under that analysis, the proposed change for KGRI will permit the provision of three first local services (Flower Mound, Tatum and Mt. Enterprise) and an increase in service from the Class A substitutions for six other stations.

### III. THE FARMERSVILLE PROPOSAL

27. The NPRM proposed the allotment of Channel 260C3 to Farmersville in order to provide a first local service to a community of 2,640 persons. The Commission should compare the overall proposal offered by the parties jointly, i.e., a first local service to three communities -- Flower Mound, Tatum and Mt. Enterprise as well as the gain in population provided by the increase from 3 kW to 6 kW or equivalent power to six Class A stations. The Commission's priorities would favor three first local services rather than the one proposed for Farmersville. The proposed first local service to Flower Mound (population 15,247) by itself would be favored over Farmersville (population 2,640) under past case law; e.g., Seymour and Pigeon Forge, Tennessee, 2 FCC Rcd 2016 (1987); Bostwick and Good Hope, Georgia, 6 FCC Rcd 5796; Three Oaks and Bridgeman, Michigan, 5 FCC Rcd 1004 (1990) and Clarksville and Lane, Indiana, 4 FCC Rcd

4968 (1989). Thus, the Commission should favor the joint counterproposal over the Farmersville proposal.

### **CONCLUSION**

The joint counterproposal is the result of efforts by many Texas and Oklahoma broadcasters which desire to improve their stations coverage and are dependent upon each other to make the overall plan effective. This effort will provide substantial public interest benefits to three new communities and increase the coverage area of six other stations. The parties have demonstrated that the proposal complies with the Columbus, Nebraska, policy since all parties except one have agreed to the changes in advance and provided verified statements. Each proposal complies with the Commission's technical requirements. The two proposals involving a change in community of license also comply with Commission rules, policies and past case law. The overwhelming public interest benefits compared with the mutually exclusive proposal at Farmersville provides the



Commission with a clear choice. Accordingly, the joint petitioners urge the Commission to adopt this counterproposal.<sup>6/</sup>

Respectfully submitted,

**HUNT BROADCASTING, INC.  
COWBOY BROADCASTING, L.L.C.**

By: Mark N. Lipp  
Mark N. Lipp

Mullin, Rhyne, Emmons and Topel, P.C.  
1225 Connecticut Avenue, N.W., #300  
Washington, D.C. 20036  
(202) 659-4700

Their Counsel

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<sup>6/</sup> All parties to this counterproposal and the Farmersville petitioners have been served. See attached Certificate of Service.